The American Waterways Operators

801 North Quincy Street
Suite 500
Arlington, VA 22203

PHONE: 703.841.9300
EMAIL: cstewart@americanwaterways.com

Caitlyn E. Stewart
Vice President – Regulatory Affairs

July 18, 2025

Ms. Raya Nedelcheva
Senior Environmental Scientist
California State Lands Commission
Division of Environmental Science, Planning, and Management
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825

RE: Notice of Proposed Rulemaking Action to Amend Article 4.9 of Chapter 1, Division 3 of Title 2 of the California Code of Regulations

Dear Ms. Nedelcheva:

The American Waterways Operators (AWO) is the tugboat, towboat, and barge industry's advocate, resource, and united voice for safe, sustainable, and efficient transportation on America's waterways, oceans, and coasts. As the largest segment of the nation's 40,000-vessel domestic maritime fleet, our industry safely and efficiently moves 665 million tons of cargo each year and enables the flow of goods through ports on the inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and the Great Lakes. On behalf of our more than 300 member companies, we appreciate the opportunity to comment on the California State Lands Commission's (CSLC) Notice of Proposed Rulemaking Action to Amend Article 4.9 of Chapter 1, Division 3 of Title 2 of the California Code of Regulations.

AWO members are proud to be an integral part of the most environmentally safe and efficient mode of freight transportation. California boasts the largest and busiest ports on the West Coast. Protecting these waters from the threat nonindigenous species pose is important to our members as part of their commitment to environmental stewardship. At the same time, we seek to ensure that state environmental regulations are risk-based, technically and operationally feasible, and do not disrupt the efficiency or continuity of maritime commerce. In that spirit, AWO is pleased to offer the following comments.

Precedent

Enacted in 2003 and administered by CSLC, the Marine Invasive Species Act (MISA) aims to minimize the introduction of nonindigenous species in California waters via ballast water discharge and biofouling. In its Initial Statement of Reasons document for this rulemaking, CSLC acknowledges that compliance with MISA and associated regulations is very high. From 2019 to 2024, the Marine Invasive Species Program (MISP) enforced a total of 14 ballast water management violations, none of which concerned ballast water discharge performance standards. Further, CSLC's 2025 Biennial Report shows that 91% of vessels visiting California ports submitted ballast water reports.[1] CSLC has an existing and transparent process for assessing penalties for MISA violations that is very effective, as demonstrated by the high rates of compliance. Despite this, the agency believes that the proposed amendments will act as a deterrent and drive even higher rates of compliance. However, AWO believes the opposite effect is more likely.

CSLC proposes its amendments in the wake of the U.S. Environmental Protection Agency (EPA)'s promulgation of the Vessel Incidental Discharges Act (VIDA) National Standards of Performance in 2024. VIDA was enacted by Congress in 2018 to eliminate the existing patchwork quilt of federal and state regulations by creating uniform national standards for ballast water and other vessel discharges. Once the U.S. Coast Guard (USCG) publishes its enforcement regulations – which it is required to do by 2026 – VIDA expressly preempts states from enforcing laws or regulations that exceed, or cannot be met concurrently with, federal standards.

Given these impending federal regulations, combined with the already-high rate of compliance with California's existing requirements, we question the basis of and need for this rulemaking.

The MISP is funded through a $1,000 fee paid on each qualifying arrival, or every time a vessel arrives at a California port from outside the state. These fees are collected by the California Department of Tax and Fee Administration (CDTFA) on behalf of CSLC.[2] Between 2022 and 2023, approximately 450 vessels were billed per month, totaling $11,053,754, with a fee collection rate of 101.4%. VIDA sets a cap on this collection, restricting the total annual state fee per vessel to $5,000, meaning the fund is projected to lose at least $400,000 once VIDA is fully implemented.[3] CSLC has acknowledged that this loss in funding could result in the program's insolvency. We are concerned that CSLC is using this rulemaking process to create new, arbitrary violations that are not based on environmental risks to offset the projected losses that will result from VIDA's annual collection cap. Though we do not want to see MISP liquidated, CSLC should not use this rulemaking as a deliberate attempt to provide grounds for finding more violations and collecting more penalties from vessel operators that are otherwise compliant with CSLC environmental protection requirements.

---

[1] California State Lands Commission. (2025). 2025 Biennial Report on the California Marine Invasive Species Program. https://slcprdwordpressstorage.blob.core.windows.net/wordpressdata/2025/01/2025-MISP-Biennial-Report_webacc.pdf

[2] California State Lands Commission. (2025). 2025 Biennial Report on the California Marine Invasive Species Program. https://slcprdwordpressstorage.blob.core.windows.net/wordpressdata/2025/01/2025-MISP-Biennial-Report_webacc.pdf

[3] California State Lands Commission. (2024). Staff Report 65. https://slcprdwordpressstorage.blob.core.windows.net/wordpressdata/2024/12/12-17-24_65.pdf?utm_source=chatgpt.com

Classification of Violations

Class I violations are classified as either Minor, Moderate, or Major, with two tiers of Major violations. CSLC is proposing to issue a Major I violation if a vessel "fails to notify the Commission, as soon as practicable, that the vessel's ballast water treatment system has stopped operating properly, as required by section 71205.3, subdivision (b)(1) of the Public Resources Code, and discharges ballast water into the coastal waters of the state…." This proposed violation is also listed under Class III violations, which concern reporting. The term "as soon as practicable" is undefined and will be interpreted differently by different parties. Additionally, we note that "stopped operating properly" is also undefined and open to interpretation; in some cases, inoperability does not mean the system has ceased working altogether, but rather that the system is working but unable to meet the effective dose. We recommend that CSLC revise this provision to provide clear definitions and reflect operational realities, and consider classifying this violation as either Class I or III, but not both.

Also under Class I, CSLC is proposing to disseminate Major II violations to any vessel subject to the California Code of Regulations, title 2, sections 2298.6 and 2298.7, that "fails to manage or document management of biofouling."[4] Conflating the failure to manage biofouling with the failure to document biofouling management is falsely presumptive, as failing to document management alone is not evidence that proper management was not conducted. As such, the failure to document management should not constitute a Class I violation but a recordkeeping or reporting violation. We strongly urge CSLC to divorce the failure to manage from the failure to document management and classify the latter as Class II or III.

Penalties

Class I Major II penalties, which can be assessed at up to $27,500 per violation, are the highest penalty vessel operators can face under the existing regulations. A failure to document biofouling management constitutes a Major II penalty in the proposed language. To our previous point, the failure to record proper management alone is not proof of the failure to manage, and as such, should not result in the highest possible penalty per the regulations.

Under penalties for Class II violations, CSLC is proposing to limit the ability to issue penalties for subsequent occurrences of the same type of ballast water recordkeeping violation that transpire "within a period of 2 (two) years after the letter of noncompliance issuance date."[5] The existing regulation lacks an established time period for subsequent violations of this category, meaning if a violation occurred in the past, a current violation of the same type would still be considered a subsequent occurrence and subject to penalty. As CSLC notes in the Initial Statement of Reasons, many factors exist that likely distinguish the circumstances of

[4] California State Lands Commission. (2025). Proposed Text of the Regulation. https://slcprdwordpressstorage.blob.core.windows.net/wordpressdata/2025/06/Proposed-Regulation-Text_Article-4.9_webacc.pdf

[5] California State Lands Commission. (2025). Proposed Text of the Regulation. https://slcprdwordpressstorage.blob.core.windows.net/wordpressdata/2025/06/Proposed-Regulation-Text_Article-4.9_webacc.pdf

a past violation compared to a more recent one. As such, we support the establishment of this two-year period, which will provide a clear window for the regulations' applicability and enforcement.

Also under Class II, the proposed amendments state that any Class II violation concerning biofouling recordkeeping after the culmination of the 60-day grace period will be subject to a penalty not to exceed $10,000-20,000 per violation. For penalties under Class III violations, subsequent occurrences of the same type of violation within a two-year timeframe after the letter of noncompliance issuance date will face a penalty of $2,000 per incident – an increase from the previous $1,000 per incident. We appreciate CSLC's clarification of the 60-day grace period and penalty limit, though we question why a doubling of the penalty for Class III violations is warranted to account for inflation – which has not increased by 100% since 2017 – and note that no other inflation adjustments are proposed.

On behalf of AWO, thank you again for the opportunity to comment on the Notice of Proposed Rulemaking Action to Amend Article 4.9 of Chapter 1, Division 3 of Title 2 of the California Code of Regulations. We appreciate CSLC's consideration of our comments and would be pleased to answer any questions or provide further information to assist in your decision-making.

Sincerely,

Caitlyn Stewart
Vice President – Regulatory Affairs